SOUTHERN UTAH WILDERNESS ALLIANCE
UTAH CHAPTER OF THE SIERRA CLUB

IBLA 91-441 Decided January 2, 1992

Appeal from competitive sale of oil and gas leases by the Utah State Office, Bureau of Land Management. UTU-68318 et al.

Dismissed.

1. Oil and Gas Leases: Competitive Leases--Rules of Practice: Appeals: Generally--Rules of Practice: Appeals: Effect of--Rules of Practice: Protests

   Departmental regulation 43 CFR 3120.1-3 provides that no action taken pursuant to regulations governing competitive oil and gas leasing in Subpart 3120 shall be suspended under 43 CFR 4.21(a), which would otherwise suspend the effect of decisions after appeal or while an appeal could be filed. Although BLM's authorized officer may suspend offering a particular lease parcel while a protest or appeal is considered, BLM properly refused to suspend sale of 37 lease parcels where objection was made on the day of sale but no reason was stated for the protest.

2. Rules of Practice: Appeals: Jurisdiction--Rules of Practice: Appeals: Standing to Appeal

   Standing to appeal a decision of BLM requires that an appellant establish that it is a party to the case adversely affected by the decision.

3. Federal Land Policy and Management Act of 1976: Wilderness--Oil and Gas Leases: Lands Subject to--Wilderness Act

   A protest against sale of oil and gas leases that contends the sale should not proceed because the land to be leased has wilderness characteristics is properly dismissed because the final administrative determination that the land was not wilderness in character was made in 1985 when BLM and the Board decided not to include the land at issue in a wilderness study area.

4. Contests and Protests: Generally--Rules of Practice: Appeals: Statement of Reasons--Rules of Practice: Protests

A protest is subject to dismissal if it is founded on conclusory allegations and no reason is given for halting the proposed action. A protestant cannot later cure the defect by stating reasons for protest for the first time on appeal to this Board.

APPEARANCES: Scott Groene, Esq., Moab, Utah, and Steve Koteff, Esq., Salt Lake City, Utah, for the South Wilderness Alliance; Christine Osborne, Public Land Specialist, Utah Chapter of the Sierra Club; Logan MacMillan, Colorado, pro se; David K. Grayson, Esq., Office of the Regional Solicitor, Salt Lake City, Utah, for the Bureau Management.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

This appeal arises from a challenge by the Southern Utah Wilderness Alliance and the Utah Chapter of the Sierr a competitive sale of oil and gas leases held on June 3, 1991, by the Utah State Office, Bureau of Land Managemer Appellants seek a stay of further BLM action implementing the sale pending review of the appeal which is n to automatic stay under provision of 43 CFR 4.21(a). See 43 CFR 3120.1-3. Action on such a motion does not n provide a basis for expediting disposition of an appeal, but when review conducted in response to a request for stay re an appeal is procedurally defective or otherwise clearly lacking in merit there is little point in withholding action o and it becomes appropriate to decide the appeal immediately. 1/ Accordingly, this appeal is dismissed.

The Mineral Leasing Act establishes a strict timetable for offering lands for oil and gas leasing. That statute requ to conduct lease sales for "each State where eligible lands are available at least quarterly and more frequently if the of the Interior determines such sales are necessary." 30 U.S.C. § 226(b)(1)(A) (1988). BLM is required to provide a proposed sale at least 45 days beforehand. 30 U.S.C. § 226(f) (1988). Once a sale is held and bids received, t requires lease issuance "within 60 days following payment by the successful bidder of the remainder of the bonus b annual rental for the first lease year." 30 U.S.C. § 226(b)(1)(A) (1988).

1/ Issuance of leases for some of the parcels does not moot this appeal. The Secretary of the Interior has authority any lease issued contrary to law. Boesche v. Udall 373 U.S. 472 (1973); D.M. Yates, 74 IBLA 159 (1983). Nonet the absence of any statutory or regulatory prohibition to lease issuance, a lease is not subject to cancellation, even i application could properly have been denied in the exercise in the Department's discretionary authority. Joan Cho IBLA 43 (1989).

Frequently, a lease offering accomplishes little change in the use of affected lands because most of the offered pa have already been subject to oil and gas leases. To identify land eligible for leasing, BLM first lists lands in oil and that have terminated, expired, been cancelled, or relinquished. See 43 CFR 3120.1-1(a). After developing a prelim of lands to be made available for leasing in the sale involved in this appeal, the Deputy State Director, Operations, se to the district managers concerned for review in order to develop appropriate stipulations and to eliminate parcels in w study areas (WSA). Some districts reported that a number of proposed parcels should not be leased, that certain tra other parcels should be deleted from the sale, and that other lands should be leased subject to limiting stipulatio revising the preliminary list in response to these reports BLM, on April 18, 1991, issued notice of competitive lease held June 3, 1991. This list included 131 parcels, two of which were deleted before sale at the request of a BLM Manager.

On June 3, the Southern Utah Wilderness Alliance and the Utah Chapter of the Sierra Club filed a "notice of intent leases for 21 parcels "in the Utah Wilderness Coalition Wilderness Proposal" and certain additional parcels in "th Play Grand Resource Area, asserted to be "directly adjacent to Canyonlands National Park." No reason for the ob the sale of these parcels was given at the time. BLM did not suspend the sale of these parcels, and the sale proceed

Included with a letter dated June 28, 1991, appellants filed a "notice of appeal" of 24 lease sales awarded by co bid on June 3, 1991, stating that a statement of reasons would be filed later. This notice did not refer to the oth

identified in the June 3 notice from appellants. On July 19, 1991, BLM sent appellants a letter informing them that had issued for parcels against which appellants had filed objections on June 3. Two of the parcels were deleted pri Five parcels received no bids and would remain open to non-competitive leasing under 30 U.S.C. § 226(c) (1988). of leases for two other parcels was withheld pending unit joinder. Another parcel for which no non-competitive lea was posted again on the list for sale on August 26, 1991.

On August 2, appellants filed a statement of reasons and a request for a stay of BLM's decisions, stating for the reasons for objecting to the sale, including an assertion that BLM had failed to comply with the requirements of the Environmental Policy Act of 1969 (NEPA), 43 U.S.C. § 4332(2)(C) (1988), and provisions of the Federal La and Management Act of 1976 (FLPMA), 43 U.S.C. § 1712 (1988).

[1] In order to meet the time limits imposed by 30 U.S.C. § 226(b)(1)(A) (1988), BLM designed sales procedure to the possibility of interruption. Regulation 43 CFR 3120.1-3 provides that no action taken pursuant to regulations i 3120 shall be suspended under 43 CFR 4.21(a), which would otherwise require that decisions not be effective after is filed or during the time in which an

appeal can be filed. BLM's authorized officer may suspend the offering of a particular parcel while a protest or considered, but a lease sale may be suspended only by action of the Assistant Secretary. 43 CFR 3120.1-3. Because for objection to the sale was given by appellants on June 3, 1991, we can find no error in the failure of BLM to sus- of the parcels against which the objection was directed.

This Board's appellate review authority cannot be invoked simply because someone may object to something BLM Departmental regulation 43 CFR 4.410 provides in relevant part that: "Any party to a case who is adversely affe decision of an officer of the Bureau of Land Management * * * shall have a right of appeal to the Board." Thus, t be an identifiable decision, the appellant must be a "party" to the case, and must be "adversely affected." The Jun from appellants refers to no decision from which appeal is taken, nor is there any suggestion that there was a case appellants were parties. The letter simply purports to appeal the fact that certain leases were sold by competitive bi 3, 1991.

[2] A person may become a party to a case by filing a protest to a proposed action under 43 CFR 4.450-2. In Coast Molybdenum Co., 68 IBLA 325 (1982). If the protest is denied or the protested action taken, the protestant m that decision to the Board if he is adversely affected.

The June 28 notice of appeal would be a timely appeal of the June 3 sale but would give us no jurisdiction to co matter unless appellants had become parties to the case. Appellants would be parties to the case only if we consid "notice of intent to appeal" submitted on June 3 to be a protest. 2/

We have held that a document denominated an "appeal" may be properly treated as a protest under 43 CFR 4.4 constitutes an objection to an action proposed to be taken by BLM. Kenneth W. Bosley, 99 IBLA 327, 332 (1987 notice of sale established no fixed period for the submission of comments or protests, and the document submitted by a was received just minutes before the opening of formal bidding on June 3, when the action to which appellants objec still be described as "proposed." Nevertheless, a protest that fails to provide any basis for objection to a proposal nothing for BLM to consider. We have held that BLM may summarily dismiss a protest if it is founded on conclusc tions that provide no reason for halting the proposed action. Kenneth W. Bosley, supra at 333.

2/ BLM treated the June 3 document as an appeal and submitted it to this Board where it was assigned Docket No. 350. BLM moved to dismiss that appeal because, among other grounds, it was filed prematurely. Were we to document as an appeal, we would have dismissed it because appellants were not parties to any decision appealed. In dismissed the appeal docketed as IBLA 91-350 by order dated Sept. 25, 1991, for the reason the appeal had been su by the instant appeal.

[3] The June 3 document provides no clue whatsoever as to why BLM should not lease parcels in what appellan "Paradox Play," nor does the identification of parcels as part of "the Utah Wilderness Coali-tion Wilderness Proposa any reason why those parcels should not be leased. 3/ In order to construe this identification as providing a reason, BI have to infer an allegation, unstated in the June 3 document, that those parcels should not be leased because the wilderness characteristics. Even if we were to give appellants the benefit of construing the June 3 document in tha the protest would still be properly dismissed because the lack of wilderness characteristics of the land outside Utal was determined with administrative finality in 1985.

BLM long ago reached final decisions designating WSA's in Utah and excluding the remaining land, and the time fo administrative review of such designations has since expired. 4/ Because those decisions have become final, E administer the land for other purposes.

[4] In Kenneth W. Bosley, supra at 333, we found that if a protest is subject to dismissal because it depends on c allegations that fail to give reasons for changing a proposed action, the protestant cannot later cure such a defect by reasons for protest on appeal to this Board:

To provide [the protestant] a right of appeal would have allowed him to raise his objections in the first instance this Board. Such a procedure would frustrate the framework for decisionmaking outlined in California Associa

Four Wheel Drive

3/ As stated above, the June 3 document identified parcels as part of "the Utah Wilderness Coalition Wilderness or "Paradox Play." No reason why parcels in the Paradox Play should not be leased was given, nor does the identif certain parcels as part of "the Utah Wilderness Coalition Wilderness Proposal" state a reason why the parcels shou leased. By enacting 30 U.S.C. § 226-3(a) (1988), Congress prohibited the issuance of leases for land recomm wilderness allocation by the surface managing agency, or land designated by BLM or Congress as WSA. As indicat however, BLM screened the preliminary list of lands for such parcels and eliminated them from the list. Appellants contention that any of the land listed by BLM falls within the prohibited categories.

4/ On Nov. 14, 1980, the Utah State Office published the "final" inventory decision in the Federal Register with resp WSA designation of public lands. 45 FR 75602 (Nov. 14, 1980). On Mar. 5, 1981, BLM published the "final" dec respect to protests filed against the inventory decision. On appeal, this Board affirmed the BLM decision in part, r it in part, and set aside and remanded it in part. Utah Wilderness Association, 72 IBLA 125 (1983). The subsequen on remand was also appealed to the Board, and WSA designation for Utah was concluded with the issuance of th decision. Utah Wilderness Association, 86 IBLA 89 (1985) 122 IBLA 21

Clubs, [30 IBLA 383, 385, 1977], and place the Board in the position of being the initial decisionmaker concern protestant's] objections.

Id. Because no reasons for appellants' objections were provided in a timely protest to BLM, we will not consider tho for the first time in their statement of reasons filed with this Board on August 2, 1991.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 the appeal is dismissed.

Franklin D. Arness
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge